

Internal Revenue Service
memorandum

CC:TL
Br3:FJElward

date: SEP 6 1989

to: District Counsel, Kansas City MW:KCY

from: Assistant Chief Counsel (Tax Litigation) CC:TL

subject: [REDACTED]

TL-R-650-89

Tax Litigation Advice

Your memorandum of July 26, 1989 requested Tax Litigation Advice on the issue presented by the above refund suit.

ISSUE

Whether the plaintiffs are entitled to statutory interest for the period of [REDACTED] to [REDACTED] on \$ [REDACTED] which the plaintiffs paid with respect to their [REDACTED] liability as a payment of estimated tax but which the Service erroneously credited to their [REDACTED] account and did not apply to their [REDACTED] account until [REDACTED].

FACTS

The facts as summarized above and below are taken from your memorandum of July 26, 1989, requesting Tax Litigation Advice and attachments to the memorandum. The plaintiffs, on [REDACTED], requested an extension of time to file their income tax return for [REDACTED]. An estimated tax payment of \$ [REDACTED] accompanied the request. On the same date, [REDACTED], the Plaintiffs made a \$ [REDACTED] payment of estimated tax for their [REDACTED] income tax liability. The Service erroneously applied the \$ [REDACTED] payment to the plaintiffs' [REDACTED] account and their \$ [REDACTED] payment to their [REDACTED] account. The net result of the erroneous application of payments was that the [REDACTED] account was overpaid by \$ [REDACTED] while the [REDACTED] account was underpaid by the same amount. (The [REDACTED] return, Form 1040, was filed on [REDACTED], presumably timely pursuant to extensions.) On [REDACTED], the Service

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transferred \$ [REDACTED] from the [REDACTED] account to the [REDACTED] account with a credit date of [REDACTED], thus avoiding failure to pay estimated tax penalties for [REDACTED].

DISCUSSION

The payment of interest on an overpayment of tax is authorized by and subject to the limitations in the Internal Revenue Code. The main provision dealing with interest on overpayments is § 6611 of the Internal Revenue Code of 1986. Prior law, particularly the Internal Revenue Code of 1954, contained provisions which are substantially the same as current § 6611. We summarize below the more pertinent rules. References are to the 1986 Code, but the principles are applicable to the years [REDACTED] and [REDACTED] since these rules were also in the Internal Revenue Code of 1954. Interest is paid on an overpayment from the overpayment date to a date not more than 30 days from the date of the refund check. In the case of a credit, interest is paid on overpayment from the overpayment date to the due date of liability against which the credit is applied. §6611(b). The overpayment date is the date on which the first payment in the account exceeds the liabilities. Treas. Reg § 301.6611-1(b). While interest is generally paid on advance payments from the due date of the return, it is not to be paid with respect to a late return until the date the return is filed. 6611(b)(3). A late return is one filed after the due date determined without regard to extensions of time to file. § 6611(b)(3). Payments of estimated tax and credits which are applied to the next year's estimated tax are deemed paid on the due date of the return for the year to which they are applied. § 6611(d), § 6513(a) and (d).

The purpose of the interest rules is to compensate the party whose money is wrongfully held by the other party. Avon Products, Inc. v. United States, 588 F.2d 342 (2nd Cir. 1978). Accepted by the Service in Rev. Rul. 1983-112, 1983-2 C.B. 247, modified, Rev. Rul. 88-89, I.R.B. 1988-47, 6, G.C.M. 39772, Reconsideration of Rev. Rul. 83-112, I-321-84 (January 11, 1989). While Avon Products involved interest imposed on the taxpayer where there was an underpayment, it sets forth the "use of money" theory which underlies the interest provisions which govern both interest to be paid to the Government on underpayments and interest to be paid to the taxpayer on overpayments.

There was no overpayment of tax which requires the Government to pay interest in the present case. The \$ [REDACTED] in question was paid as estimated tax for [REDACTED]. The Service

initially erroneously applied it to the estimated tax for [REDACTED], but later corrected this error and transferred it to the [REDACTED] account with a credit date of [REDACTED], as requested when the payment was made. The application of the \$ [REDACTED] did not result in the payments in the [REDACTED] account exceeding the liabilities so there was no overpayment for [REDACTED]. Since the credit date of the \$ [REDACTED] payment when applied to the [REDACTED] account was [REDACTED], the date the payment was made, the taxpayer has not suffered any wrongful loss or deprivation of the use of money improperly held by the Government. The net effect of the various bookkeeping entries are just what was intended: the \$ [REDACTED] was tendered as a payment of estimated tax for [REDACTED] on [REDACTED] and has been treated as just that. The Government has not wrongfully had the use of the \$ [REDACTED]. It was entitled to a payment of estimated [REDACTED] tax on [REDACTED] and has received it on that date and eventually corrected its books to reflect these facts.

Even in the event that the \$ [REDACTED] were considered an overpayment for [REDACTED], no interest would be payable since the overpayment date for [REDACTED] could not be a date before [REDACTED], the date the [REDACTED] return was filed, and the payment was applied to estimated as of [REDACTED], satisfying an estimated tax liability with that due date. Since the credit date satisfied a liability with a due date which preceded the overpayment date, no interest could run on the "overpayment". If interest were paid to the plaintiffs on the \$ [REDACTED] the Government would, in effect, be paying interest twice, once when it credited the payment to the account with a credit date of [REDACTED] terminating a liability which if unpaid would generate interest due the Government and again when it paid interest from [REDACTED] to [REDACTED]. If the Government were required to pay interest from [REDACTED] to [REDACTED], the plaintiffs would have been compensated for the use of their money up to [REDACTED] and the credit applied to the estimated tax for [REDACTED] should have had a date of [REDACTED], not [REDACTED]. I.R.C. § 6611(b)(1).

In the alternative, assuming there was an overpayment for [REDACTED], interest on a [REDACTED] overpayment could not commence before the date on which the [REDACTED] return was filed, [REDACTED] § 6611(b)(3). Thus the interest period would be [REDACTED] to [REDACTED], not [REDACTED] to [REDACTED].

CONCLUSION

The plaintiffs are not entitled to any statutory interest on the \$ [REDACTED] paid and eventually credited as a payment of estimated tax for [REDACTED].

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By:



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